

In the Matter of	)	CG Docket No. 02-278
Petition for Waiver of	)	
Papa Murphy's Holdings, Inc. and	)	DA 16-1179
Papa Murphy's International L.L.C.	)	
	)	
Rules and Regulations Implementing the	)	
Telephone Consumer Protection Act of 1991	)	
	)	
Petitions for Waiver and/or Retroactive Waiver of	)	
47 CFR Section 64.1200(a)(2) Regarding the	)	
Commission's Prior Express Written Consent	)	
Requirement	)	
	)	

John Lennartson and Susan Shay Nohr (“Petitioners”), by their attorneys and pursuant to 47 CFR § 1.106(f), hereby submit this request for leave to file a supplement to their November 14, 2016 Petition for Reconsideration of Retroactive Waiver<sup>1</sup> to Papa Murphy’s (“Petition”) in the above captioned proceeding. The supplement consists of the Affidavit of Christopher Butler with Exhibit A (authenticated archived copies of Papa Murphy’s website on January 31, 2014 and March 30, 2014).

<sup>1</sup> See *In re Rules & Regs. Implementing the TCPA of 1991 Petitions for Waiver and/or Retroactive Waiver of 47 CFR Section 64.1200(a)(2) Regarding the Commission's Prior Express Written Consent Requirement*, CG Docket No. 02-278 ¶ 1 (Oct. 14, 2016) (hereinafter "Waiver Order").

Commission may grant leave to file a supplement to a petition for reconsideration upon a separate pleading for leave to file, which states the grounds.

In this instance, on November 14, 2016 Petitioners provided evidence that Papa Murphy's was not confused by the 2012 Order<sup>2</sup>, but was instead simply unaware of it, thus negating the sole basis for the waiver. *See* Pet. at 14; Reply at 4. This evidence included archived copies of Papa Murphy's website showing that Papa Murphy's did not comply or implement the 2012 Order's express written consent requirements until long after the effective date of these requirements, thus demonstrating that Papa Murphy's was simply unaware of the 2012 Order, not confused by it. Petitioners informed the Commission that it would provide authenticated copies of these webpages. *See* Reply at 4. This proposed supplement provides authenticated copies of these same webpages, and consequently provides the Commission with an authenticated factual record as to Papa Murphy's lack of confusion. This supplement is particularly important in light of Papa Murphy's unsupported claims to counter this evidence that it made changes to its text message program disclosures that related to the 2012 Order on or about October 16, 2013. *See* Resp. at 10. Based on the evidence now available to the Commission, this is incorrect: nowhere on these webpages is there (1) a disclosure that Papa Murphy will send text messages using an autodialer or (2) a disclosure that consent is not a condition of purchase.

Since the Commission has not yet acted on Petitioners' Petition for Reconsideration, acceptance of this supplement will not delay the proceeding.

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<sup>2</sup> *See In re Rules & Regs. Implementing the TCPA of 1991*, 27 FCC Rcd. 1830, 1836 (Feb. 15, 2012) (hereinafter "2012 Order").

Based on the foregoing, Petitioners respectfully ask the Commission to grant this Request for Leave to File Supplement and accept the accompanying supplement for the record in this proceeding.

DATED this 16th day of December, 2016.

Respectfully submitted,

By: s/June P. Hoidal

June P. Hoidal  
Behdad C. Sadeghi  
ZIMMERMAN REED LLP  
1100 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402  
Tel: (612) 341-0400  
Fax: (612) 341-0844  
June.Hoidal@zimmreed.com  
Behdad.Sadeghi@zimmreed.com

Mark A. Griffin  
Karin B. Swope  
KELLER ROHRBACK LLP  
1201 Third Avenue, Suite 3200  
Seattle, WA 98101  
Tel: (206) 623-1900  
Fax: (206) 623-3384  
mgriffin@kellerrohrback.com  
kswope@kellerrohrback.com

*Attorneys for Petitioners*  
*John Lennartson and Susan Shay Nohr*

## **CERTIFICATE OF SERVICE**

I hereby certify that on December 16, 2016, I caused John Lennartson and Susan Shay Nohr's Request for Leave to File Supplement to Petition for Reconsideration of Retroactive Waiver to Papa Murphy's Holdings, Inc. and Papa Murphy's International L.L.C. to be served on the parties listed on the attached service list via the Electronic Comment Filing System and First Class Mail.

I further certify that I also served an electronic courtesy copy on counsel for Papa Murphy's Holdings, Inc. and Papa Murphy's International L.L.C. via e-mail.

*s/ June P. Hoidal*  
June P. Hoidal

## SERVICE LIST

Stellman Keehnel  
Anthony Todaro  
Jeffrey DeGroot  
DLA PIPER LLP (US)  
701 Fifth Avenue  
Seattle, WA 98104-7044  
stellman.keehnel@dlapiper.com  
anthony.todaro@dlapiper.com  
jeffrey.degroot@dlapiper.com

*Counsel for Papa Murphy's Holdings, Inc.  
and Papa Murphy's International L.L.C.*

Ronald London  
Christin McMeley  
DAVIS WRIGHT TREMAINE LLP  
1919 Pennsylvania Avenue N.W., Suite 800  
Washington, D.C. 20006-3401

*Counsel for National Cable &  
Telecommunications Association*

Michael J. Jaurigue  
Abigail A. Zelenski  
David Zelenski  
Sehreen Ladak  
JAURIGUE LAW GROUP  
114 North Brand Boulevard, Suite 200  
Glendale, California 91203

*Counsel for Paul Story*

Kim E. Rinehart  
John M. Doroghazi  
WIGGIN AND DANA LLP  
One Century Tower  
P.O. Box 1832  
New Haven, Connecticut 06508-1832

*Counsel for Rita's Water Ice Franchise  
Company, LLC*

Jeffrey L. William, P.C.  
Jordan M. Heinz  
Lally A. Gartel  
KIRKLAND & ELLIS LLP  
300 North LaSalle  
Chicago, IL 60654

*Counsel for Mammoth  
Mountain Ski Area, LLC*

Daniel J. Donnellon  
Alex Rodger  
A. Lauren R. Nichols  
BINGHAM GREENEBAUM DOLL LLP  
255 E. Fifth Street, Suite 2350  
Cincinnati, OH 45202

*Counsel For F-19 Holdings, LLC and  
All Affiliated Franchisees*

Thomas A. Zimmerman, Jr.  
Jordan M. Rudnick  
Nickolas J. Hagman  
ZIMMERMAN LAW OFFICES, P.C.  
77 West Washington Street, Suite 1220  
Chicago, Illinois 60602

*Counsel for Rusty Payton*

Ali Sternburg  
Public Policy & Regulatory Counsel  
COMPUTER & COMMUNICATIONS  
INDUSTRY ASSOCIATION  
900 17th Street, NW  
Suite 1100  
Washington, DC 20006

*Counsel for Computer & Communications  
Industry Association*

Peter C. Morse  
MORSE, BOLDUC & DINOS LLC  
25 E. Washington St. Suite 750  
Chicago, IL 60602

*Counsel for Kale Realty, LLC*

Steve Brubaker  
Chief of Staff  
INFOCISION MANAGEMENT  
CORPORATION  
325 Springside Drive  
Akron, OH 44333

Joe Shields  
TEXAS GOVERNMENT & PUBLIC  
RELATIONS SPOKESPERSON FOR  
PRIVATE CITIZEN INC.  
16822 Stardale Lane  
Friendswood, Texas 77546

Eve Klindera Reed  
Joan Stewart  
Wiley Rein LLP  
1776 K Street, NW  
Washington, DC 20006

*Counsel to the Joint Broadcasters*

Harold Kim  
Executive Vice President  
U.S. CHAMBER INSTITUTE FOR  
LEGAL REFORM  
1615 H Street, NW  
Washington, DC 20062-2000

Rick Kaplan  
Jerianne Timmerman  
Ann West Bobeck  
NATIONAL ASSOCIATION OF  
BROADCASTERS  
1771 N Street, N.W., Sixth Floor  
Washington, DC 20036